

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 PROF-2013-S3 LEGAL TITLE TRUST V,
4 By U.S. Bank National Association as Legal
Title Trustee,

5 Plaintiff

6 v.

7 SATICOY BAY LLC SERIES 6425
8 EXTREME SHEAR, BOULDER RANCH
9 MASTER ASSOCIATION, and
HOMEOWNER ASSOCIATION
SERVICES, INC.

10 Defendants

11 AND ALL RELATED COUNTERCLAIMS
12 AND CROSS CLAIMS

Case No.: 2:17-cv-01790-APG-CWH

**Order (1) Granting Plaintiff's Motion for
Summary Judgment, (2) Denying Saticoy's
Motion for Summary Judgment, and (3)
Granting in Part Boulder Ranch's Motion
for Summary Judgment**

[ECF Nos. 48, 49, 57]

13 Plaintiff PROF-2013-S3 (PROF) filed this lawsuit to determine whether its deed of trust
14 still encumbers property located at 6425 Extreme Shear Avenue #101, Henderson, Nevada
15 following a non-judicial foreclosure sale conducted by defendant Boulder Ranch Master
16 Association (Boulder Ranch). ECF No. 22. PROF also asserts an unjust enrichment claim
17 against Boulder Ranch; Boulder Ranch's foreclosure agent, defendant Homeowner Association
18 Services, Inc. (HAS); and the current owner of the property, defendant Saticoy Bay LLC Series
19 6425 Extreme Shear (Saticoy). *Id.* Finally, PROF asserts other damages claims against Boulder
20 Ranch and HAS. *Id.*

21 Saticoy counterclaims for a declaration that the foreclosure sale extinguished the deed of
22 trust. ECF No. 29. Saticoy also cross-claims against Boulder Ranch and HAS for fraudulent
23 concealment and unjust enrichment. *Id.*

1 PROF and Saticoy each move for summary judgment on their declaratory relief claims.
2 Saticoy also moves for summary judgment on its misrepresentation and unjust enrichment cross-
3 claims against Boulder Ranch. Boulder Ranch opposes Saticoy's motion and also moves for
4 summary judgment on the cross-claims against it.

5 The parties are familiar with the facts, and I will not repeat them here except where
6 necessary to resolve the motions. Because PROF tendered the superpriority amount, it is entitled
7 to judgment as a matter of law on its own declaratory relief claim and on Saticoy's
8 counterclaims. And because the deed of trust was not extinguished, PROF's damages claims
9 against Boulder Ranch and HAS are moot. I therefore grant summary judgment in favor of
10 PROF and against Saticoy and dismiss as moot PROF's damages claims (except unjust
11 enrichment)¹ against Boulder Ranch and HAS. I grant Boulder Ranch's motion as to Saticoy's
12 fraudulent misrepresentation claim and grant it in part as to Saticoy's unjust enrichment claim. I
13 deny Saticoy's motion.

14 **I. ANALYSIS**

15 Summary judgment is appropriate if the movant shows "there is no genuine dispute as to
16 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
17 56(a), (c). A fact is material if it "might affect the outcome of the suit under the governing law."
18 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if "the evidence
19 is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

22 ¹ No party moved for summary judgment on PROF's unjust enrichment claim and it is not clear
23 from that claim's allegations that it was asserted only as a form of alternative relief if the deed of
trust was extinguished. *See* ECF No. 22 at 17. That claim therefore remains pending against all
defendants.

1 The party seeking summary judgment bears the initial burden of informing the court of
2 the basis for its motion and identifying those portions of the record that demonstrate the absence
3 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The
4 burden then shifts to the non-moving party to set forth specific facts demonstrating there is a
5 genuine issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531
6 (9th Cir. 2000); *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018) (“To defeat
7 summary judgment, the nonmoving party must produce evidence of a genuine dispute of material
8 fact that could satisfy its burden at trial.”). I view the evidence and reasonable inferences in the
9 light most favorable to the non-moving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523
10 F.3d 915, 920 (9th Cir. 2008).

11 **A. Statute of Limitations**

12 Saticoy moves to dismiss PROF’s declaratory relief claim, arguing a three-year limitation
13 period applies. PROF responds that a five-year limitation period applies.

14 I have previously ruled that the four-year catchall limitation period in § 11.220 applies to
15 declaratory relief claims under Nevada Revised Statutes § 40.010 brought by a lienholder
16 seeking to determine whether an HOA sale extinguished its deed of trust. *See Bank of Am., N.A.*
17 *v. Country Garden Owners Ass’n*, No. 2:17-cv-01850-APG-CWH, 2018 WL 1336721, at *2 (D.
18 Nev. Mar. 14, 2018). The HOA foreclosure sale took place on November 21, 2013, the trustee’s
19 deed upon sale was recorded on January 6, 2014, and PROF filed the complaint in this matter on
20 June 29, 2017. ECF Nos. 1; 48-16. PROF’s claim for a declaration that the deed of trust was not
21 extinguished therefore is timely.²

22
23 ² PROF’s unjust enrichment claim is also timely. *See In re Amerco Derivative Litig.*, 252 P.3d
681, 703 (Nev. 2011) (en banc) (“The statute of limitation for an unjust enrichment claim is four
years.” (citing Nev. Rev. Stat § 11.190(2)(c))).

1 **B. Tender**

2 PROF moves for summary judgment, arguing that it tendered the superpriority amount
3 prior to the HOA sale. Saticoy raises a variety of arguments as to why tender did not extinguish
4 the lien. Specifically, Saticoy contends that (1) PROF cannot resort to equity because it has an
5 adequate remedy at law and failed to protect its interest prior to the sale; (2) tender creates either
6 an assignment or subrogation that must be recorded to affect the rights of a bona fide purchaser
7 like Saticoy; (3) the tender letter contained falsehoods and impermissible conditions; (4) PROF
8 did not prove there were sufficient funds to cover the tender check; (5) HAS rejected the tender
9 in good faith; and (6) PROF has not properly authenticated or shown the admissibility of the
10 evidence establishing the superpriority amount and tender.

11 Under Nevada law, a “first deed of trust holder’s unconditional tender of the superpriority
12 amount due results in the buyer at foreclosure taking the property subject to the deed of trust.”
13 *Bank of Am., N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 116 (Nev. 2018) (en banc). To
14 be valid, tender must be for “payment in full” and must either be “unconditional, or with
15 conditions on which the tendering party has a right to insist.” *Id.* at 118.

16 Here, no genuine dispute remains that BAC Home Loans Servicing, LP paid the
17 superpriority amount in full. The monthly homeowners association (HOA) assessment was
18 \$37.50 per month and increased to \$38.75 in 2011. ECF Nos. 48-14 at 13; 48-18 at 10. Prior to
19 the HOA foreclosure sale, BAC tendered \$348.75 to cover the superpriority amount. ECF No.
20 48-14 at 16-18. There is no evidence of nuisance abatement charges. There also is no evidence
21 Boulder Ranch recorded a second notice of delinquent assessment lien that might have triggered
22 a second superpriority lien. *See Prop. Plus Investments, LLC v. Mortg. Elec. Registration Sys.,*
23 *Inc.*, 401 P.3d 728, 731-32 (Nev. 2017) (en banc). The superpriority lien therefore was

1 extinguished, and the property remains subject to the deed of trust. *Bank of Am., N.A.*, 427 P.3d
2 at 121. I address below each of Saticoy’s other challenges to the tender.

3 *1. Equity*

4 Saticoy contends that PROF cannot resort to equity because it has an adequate remedy at
5 law, it failed to protect its interest prior to the sale, and Saticoy is a bona fide purchaser.

6 Generally, a party cannot obtain an equitable remedy when it has an adequate remedy at law. *Las*
7 *Vegas Valley Water Dist. v. Curtis Park Manor Water Users Ass’n*, 646 P.2d 549, 551 (Nev.
8 1982). However, Nevada Revised Statutes § 40.010, which allows for resolving disputes
9 involving adverse interests in property, “essentially codified” Nevada’s historical recognition
10 “that courts retain the power to grant equitable relief from a defective foreclosure sale when
11 appropriate” *Shadow Wood HOA v. N.Y. Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1111-12
12 (Nev. 2016) (en banc). Thus, while the availability of other remedies (both before and after the
13 sale) may bear on the equities, a claim to set aside an allegedly defective foreclosure sale is
14 necessarily an equitable one that will impact the various interests in the property and their
15 relative priority. PROF seeks not just repayment of its loan, but the right to resort to this
16 particular property as security for repayment. No remedy at law could overturn the foreclosure
17 sale and reinstate PROF’s lien on the property. *See Bank of Am., N.A. v. Diamond Fin., LLC*, 42
18 N.E.3d 1151, 1156-57 (Mass. 2015) (concluding a legal remedy was inadequate because “money
19 damages would not restore the plaintiff to its rightful senior position”); *Bank of N.Y. Mellon v.*
20 *Withers*, 771 S.E.2d 762, 765 (N.C. Ct. App. 2015) (“Due to land’s unique nature, damage
21 claims against individuals are an inadequate substitute for a first position lien on real property.”).

22 PROF acted to protect its interest through the tender, and a valid tender discharges the
23 superpriority lien “by operation of law.” *Id.* at 120. Finally, Saticoy’s status as a bona fide

1 purchaser in terms of weighing the equities is irrelevant because the tender rendered the HOA
2 sale void as to the superpriority lien. *Id.* at 121.

3 2. *Recording the Tender*

4 Saticoy argues that tender of the superpriority amount creates either an assignment or
5 subrogation of the HOA lien, and an assignment or subrogation must be recorded to affect the
6 rights of a bona fide purchaser like Saticoy. The Supreme Court of Nevada has rejected the
7 argument that a tender must be recorded. *Id.* at 119-20. Although Saticoy contends the Supreme
8 Court of Nevada erred in its analysis, it is the role of that court, not this court, to determine
9 Nevada law. *Rudin v. Myles*, 781 F.3d 1043, 1054 (9th Cir. 2015) (The Supreme Court of
10 Nevada “is the final arbiter of Nevada state law.”).

11 3. *Falsehoods and Impermissible Conditions*

12 Saticoy contends the tender letter contained falsehoods and impermissible conditions.
13 Specifically, Saticoy contends that the letter falsely states (1) the scope of a superpriority lien by
14 not mentioning nuisance abatement costs; (2) that PROF’s obligations would be paid in full even
15 though the HOA could institute another superpriority lien on an annual basis; and (3) that the
16 payment was being made by cashier’s check when it was a check from a trust account. Saticoy
17 also argues Boulder Ranch could not accept the tender offer without violating various provisions
18 of Chapter 116.

19 PROF responds that it did not need to mention abatement charges because there were
20 none regarding this property. PROF also argues that it is not required to present a cashier’s
21 check to satisfy tender and even if the letter misrepresented the type of check, that is not a basis
22 to invalidate the tender. PROF also notes that the tender letter in this case is identical to one the
23 Supreme Court of Nevada found imposed permissible conditions.

1 The Supreme Court of Nevada has examined a tender letter identical to the one at issue
2 here and ruled that it did not impose impermissible conditions. *Compare Bank of Am., N.A.*, 427
3 P.3d at 118 *with* ECF No. 60-6 at 13. That court did not indicate that the tender or the tender
4 letter violated Chapter 116 and its anti-waiver provisions, an issue with which that court is very
5 familiar.

6 There is no evidence of nuisance abatement costs related to this property, so the letter's
7 failure to mention that possibility is irrelevant here. *See TRP Fund IV, LLC v. Bank of New York*
8 *Mellon as Tr. for Certificate Holders of CWALT, Inc.*, No. 74002, 434 P.3d 926, 2019 WL
9 912693, at *1, n.2 (Nev. 2019) ("Because no maintenance or nuisance abatement costs had been
10 incurred at the time the tender was made, the tender for 9 months of assessments was sufficient
11 to cure the default as to the superpriority portion of the HOA's lien. If the HOA had thereafter
12 incurred such costs, it would have been required to issue new foreclosure notices if it sought to
13 afford those costs superpriority status."). Additionally, Saticoy is incorrect in its statement that
14 an HOA can collect a superpriority lien on "an annual basis." ECF No. 49 at 11. Nevada
15 Revised Statutes § 116.3116 "does not limit an HOA to one lien enforcement action or one
16 superpriority lien per property forever." *Prop. Plus Investments, LLC*, 401 P.3d at 73. "But to
17 trigger a new superpriority lien, the HOA must commence a new enforcement action" by either
18 "completing a prior enforcement action through foreclosure" or "recording a rescission of a prior
19 lien." *Nationstar Mortg. LLC v. Saticoy Bay LLC Series 8920 El Diablo*, No. 2:16-cv-00751-
20 JCM-VCF, 2018 WL 1770127, at *6 (D. Nev. Apr. 12, 2018) (citing *Prop. Plus Investments,*
21 *LLC*, 401 P.3d at 731-32). There is no evidence Boulder Ranch rescinded the prior lien or
22 recorded a new notice of lien after BAC paid off the initial superpriority amount.

1 Saticoy is correct that the letter misidentifies the tender check as a cashier's check when
2 in fact it was drawn on a law firm's trust account. ECF No. 48-14 at 17-18. But nothing in
3 Chapter 116 or Nevada case law requires tender be in the form of a cashier's check. *See Bank of*
4 *New York Mellon v. Hillcrest at Summit Hills Homeowners Ass'n*, No. 2:16-cv-02295-GMN-
5 PAL, 2019 WL 415324, at *5 (D. Nev. Jan. 31, 2019); *Chinatown St. Tr. v. Bank of Am., N.A.*,
6 No. 74545-COA, 2018 WL 6609590, at *1 (Nev. App. Dec. 7, 2018). Saticoy does not provide
7 case law supporting its position that a minor error in the description of the check invalidates the
8 tender. I predict³ the Supreme Court of Nevada would not invalidate tender on this basis.

9 Finally, nothing in the letter refers to waiving a future superpriority lien. ECF No. 48-14
10 at 16-17. And the Supreme Court of Nevada has rejected similar arguments. *See TRP Fund IV,*
11 *LLC*, 2019 WL 912693, at *1; *TRP Fund IV, LLC v. U.S. Bank, N.A. as Tr. for SROF-2013-S3*
12 *Remic Tr. 1*, No. 72234, 430 P.3d 531, 2018 WL 6134028, at *1, n.2 (Nev. 2018).

13 4. Proof of Sufficient Funds

14 Saticoy argues PROF did not prove there were sufficient funds to cover the tender check
15 because it was a trust account check, not a cashier's check. PROF responds that there is no
16 genuine dispute that the check would have cleared and Saticoy presents no evidence that it would
17 not.

18 Even viewing the evidence in the light most favorable to Saticoy on PROF's motion, no
19 genuine dispute remains. The fact that the check was signed and presented to HAS to cash as
20 payment for the superpriority lien is sufficient evidence to meet PROF's initial burden of
21 showing it tendered the superpriority amount. Saticoy presents no evidence there were
22

23 ³ The Supreme Court of Nevada has not yet addressed this issue. "Absent a controlling state
court decision," I must "predict how the highest state court would decide the issue." *In re*
Kekauoha-Alisa, 674 F.3d 1083, 1087-88 (9th Cir. 2012).

1 insufficient funds to cover the check. Saticoy's reliance on *Graff v. Burnett*, 414 N.W.2d 271
2 (Neb. 1987) is therefore misplaced. *See Nationstar Mortg. LLC v. Springs at Spanish Trail*
3 *Ass'n*, No. 2:15-cv-01217-JAD-GWF, 2019 WL 2250264, at *4 (D. Nev. May 24, 2019)
4 (rejecting a similar argument based on *Graff* where there was no evidence of insufficient funds;
5 "the check was actually cut, received by [the HOA's agent], and returned; and the letter that
6 accompanied the check indicated that it was being sent as payment").

7 *5. Good Faith Rejection of Tender*

8 Saticoy argues HAS rejected the tender in good faith. PROF responds that valid tender
9 discharges the superpriority lien by operation of law regardless of whether the rejection of tender
10 was in good faith. The Supreme Court of Nevada has indicated that an HOA's or its agent's
11 "subjective good faith in rejecting the tender is legally irrelevant, as the tender cured the default
12 as to the superpriority portion of the lien by operation of law." *Nationstar Mortg., LLC v. Jackel*
13 *Properties, LLC*, No. 75040, 435 P.3d 1224, 2019 WL 1244787, at *1 (Nev. 2019) ("Because the
14 superpriority portion of the lien was no longer in default following the tender, the ensuing
15 foreclosure sale was void as to the superpriority portion of the lien, and [agent's] basis for
16 rejecting the tender could not validate an otherwise void sale in that respect.").

17 *6. Authentication and Hearsay*

18 Saticoy argues PROF has not properly authenticated or shown the admissibility of the
19 evidence establishing the superpriority amount and tender. Saticoy contends that the HOA
20 ledger attached to the affidavit of Douglas Miles is unauthenticated and inadmissible hearsay.
21 Saticoy also contends that because Miles testified in another case that he does not review the file
22 or retrieve the documents in any particular HOA case, he cannot authenticate the documents
23

1 attached to his affidavit. And Saticoy argues Miles does not sufficiently establish the law firm's
2 business records contained in a computer database are admissible as business records.

3 PROF responds that the Miles affidavit sufficiently authenticates the records.
4 Additionally, PROF notes that HAS's representative testified at his deposition that the monthly
5 assessments were \$38.75.

6 Federal Rule of Civil Procedure 56 does not require that evidence be presented in
7 admissible form at summary judgment. Rather, under Rule 56(c)(2), a party "may object that the
8 material cited to support or dispute a fact cannot be presented in a form that would be admissible
9 in evidence." Under Federal Rule of Evidence 901(a), a party offering evidence "must produce
10 evidence sufficient to support a finding that the item is what the proponent claims it is." Under
11 Rule 803(6), a record of a regularly conducted activity is not excluded by the hearsay rule if the
12 record meets the following requirements:

- 13 (A) the record was made at or near the time by--or from information transmitted
by--someone with knowledge;
- 14 (B) the record was kept in the course of a regularly conducted activity of a
business, organization, occupation, or calling, whether or not for profit;
- 15 (C) making the record was a regular practice of that activity;
- 16 (D) all these conditions are shown by the testimony of the custodian or another
qualified witness, or by a certification that complies with Rule 902(11) or (12) or
with a statute permitting certification; and
- 17 (E) the opponent does not show that the source of information or the method or
circumstances of preparation indicate a lack of trustworthiness.

18
19 Miles avers that the records related to the tender are authentic and meet each of Rule
20 803(6)'s requirements. ECF No. 48-14 at 2-4. He authenticates the HOA ledger as what was
21 received from HAS. *Id.* HAS's representative, Michael Randolph, confirmed that the monthly
22 assessment was \$38.75. ECF No. 48-18 at 11. PROF could call Miles to testify at trial about the
23 tender efforts and Randolph to testify to the superpriority amount.

1 Saticoy has not presented evidence raising a genuine dispute about the Rule 803(6)
2 factors, the documents' authenticity, or that the superpriority amount is something other than
3 what BAC tendered. Saticoy "must do more than simply show that there is some metaphysical
4 doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
5 586 (1986). It has not done so here. *See Springs at Spanish Trail Ass'n*, 2019 WL 2250264, at
6 *5 (rejecting similar evidentiary challenges).

7 **C. Damages Claims Against Boulder Ranch and HAS**

8 PROF asserted its wrongful foreclosure, negligence, negligence per se, and
9 misrepresentation claims against Boulder Ranch and HAS as an alternative means of relief in the
10 event that its deed of trust was extinguished.⁴ The deed of trust was not extinguished. Thus,
11 those claims are now moot, so I dismiss them.

12 **D. Saticoy's Fraudulent Misrepresentation Claim Against Boulder Ranch and HAS**

13 Saticoy and Boulder Ranch move for summary judgment on Saticoy's fraudulent
14 misrepresentation claim against Boulder Ranch. Saticoy argues that HAS did not inform bidders
15 at the sale that BAC had tendered the superpriority amount because if bidders knew that, they
16 would not have bid as much. Saticoy also contends that it would not have bid \$11,600 if it had
17 known the superpriority lien had been extinguished.

18 Boulder Ranch argues that Saticoy has not presented any evidence that Boulder Ranch
19 intended to defraud Saticoy. Rather, Boulder Ranch argues, the evidence shows that just prior to
20 the time BAC attempted tender, the Commission for Common Interest Communities and

21
22 ⁴ See ECF No. 22 at 1 ("If it is determined that the Deed of Trust has been extinguished by the
23 HOA Sale as a proximate result of HOA and HOA Trustee's wrongful/statutorily defective
foreclosure of the Property by the HOA Sale, Plaintiff has suffered special damages"; *id.* at
19-22 (same with respect to claims for negligence and negligence per se); *id.* at 21-22 (alleging
reliance on the tender for the misrepresentation claim).

1 Condominium Hotels (CCICCH) had issued an advisory opinion stating that interest, late fees,
2 and collection costs were included in the superpriority lien. Boulder Ranch thus argues it
3 (through HAS) had a good faith basis to reject the tender as insufficient to cover the superpriority
4 amount. Boulder Ranch also argues it did not owe a duty to disclose the tender attempt, and thus
5 it cannot be liable on a fraud by concealment theory.

6 To establish a misrepresentation claim, Saticoy must show: (1) Boulder Ranch made a
7 false representation with either knowledge or belief that the representation was false or without a
8 sufficient foundation to make the statement, (2) Boulder Ranch intended to induce Saticoy's
9 reliance, and (3) Saticoy was damaged as a result of that reliance. *Nelson v. Heer*, 163 P.3d 420,
10 426 (Nev. 2007). As to the first element, "the suppression or omission of a material fact which a
11 party is bound in good faith to disclose is equivalent to a false representation, since it constitutes
12 an indirect representation that such fact does not exist." *Id.* (quotation omitted).

13 Saticoy presents no evidence in support of the second element's requirement that Boulder
14 Ranch intended to induce Saticoy to rely on there being a superpriority lien. In support of its
15 motion, Saticoy presents the affidavit of its own person most knowledgeable, Iyad Haddad. ECF
16 No. 49-9. Haddad avers that Boulder Ranch and HAS did not announce at the sale that there had
17 been a tender attempt. *Id.* at 3. Haddad states that he "believe[s]" that HAS and Boulder Ranch
18 "intended buyers at the HOA foreclosure sale . . . [to] believe that the assessment lien being
19 foreclosed included a super-priority component that would extinguish the first deed of trust"
20 *Id.* at 3-4. Haddad's unsupported personal belief is not evidence of HAS's or Boulder Ranch's
21 intent. Because Saticoy has not identified any evidence raising a genuine dispute on this
22 element, I deny Saticoy's motion and grant Boulder Ranch's motion for summary judgment on
23 this claim.

1 **E. Saticoy’s Unjust Enrichment Claim Against Boulder Ranch and HAS**

2 Saticoy and Boulder Ranch move for summary judgment on Saticoy’s unjust enrichment
3 claim against Boulder Ranch. Saticoy again argues that HAS did not announce at the sale that
4 BAC had attempted tender and it consequently bid more than it would have if it had known of
5 the tender attempt. Saticoy argues that as a result, Boulder Ranch benefitted from Saticoy’s
6 “high bid of \$11,600.00.” ECF No. 49 at 25. Saticoy seeks “any and all monies paid by Saticoy
7 Bay for the acquisition, maintenance, and preservation of the Property, including interest, and
8 attorney’s fees and costs.” *Id.*

9 Boulder Ranch argues that Saticoy has not presented evidence in support of this claim,
10 including no evidence that Boulder Ranch received and retained the \$11,600.00 purchase price
11 or that Saticoy conferred a benefit on Boulder Ranch through funds it expended maintaining and
12 preserving the property, accruing interest, or paying attorney’s fees and costs. Boulder Ranch
13 also argues that Saticoy presented no evidence that it would not have bid at all on the property if
14 it had known about the tender attempt or what lower amount it might have bid if it had known.

15 “Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the
16 defendant appreciates such benefit, and there is acceptance and retention by the defendant of
17 such benefit under circumstances such that it would be inequitable for him to retain the benefit
18 without payment of the value thereof.” *Certified Fire Prot. Inc. v. Precision Constr.*, 283 P.3d
19 250, 257 (Nev. 2012) (quotation omitted). “Under Nevada law, the measure of damages for an
20 unjust enrichment claim is the benefit received by defendants.” *Momot v. Mastro*, No. 2:09-CV-
21 00975-RLH-LRL, 2011 WL 1833349, at *3 (D. Nev. May 13, 2011).

22 Viewing the evidence in the light most favorable to Boulder Ranch on Saticoy’s motion,
23 genuine disputes remain regarding whether and how much Saticoy would have bid on the

1 property had it been announced that BAC had attempted to pay nine months' worth of
2 assessments. Haddad states in his affidavit that if HAS and Boulder Ranch had disclosed "that
3 the assessment lien being foreclosed did not have a super priority component," then Saticoy
4 "would not have bid and paid \$11,600.00 for the Property." *Id.* at 5. But at the time of this sale,
5 announcing that BAC had attempted to pay nine months' worth of assessments would not
6 necessarily have been the same thing as announcing that the lien did not have a superpriority
7 component. As the briefing in this case shows, Saticoy even now disputes that BAC's tender
8 extinguished the superpriority lien. Consequently, a reasonable jury could conclude that Saticoy
9 would have bid on the property even if it had learned that BAC attempted to pay nine months'
10 worth of assessments.

11 However, Saticoy does not explain how costs incurred maintaining the property, interest,
12 or attorney's fees conferred a benefit on Boulder Ranch, that Boulder Ranch retained that
13 benefit, or that it would be unjust for Boulder Ranch to retain any benefit it received as to these
14 alleged damages. Nor does Saticoy present evidence that it actually incurred any such costs. I
15 therefore grant Boulder Ranch's motion with respect to these alleged damages.

16 Viewing the evidence in the light most favorable to Saticoy on Boulder Ranch's motion,
17 genuine disputes remain as well. Saticoy has presented evidence that it conferred a benefit on
18 Boulder Ranch. ECF No. 49-1 (foreclosure deed upon sale showing Saticoy paid \$11,600 to
19 HAS, who was acting on behalf of Boulder Ranch to foreclose on Boulder Ranch's lien).
20 Although Haddad's affidavit is not precise about what impact an announcement of the tender
21 attempt might have had, it is reasonable to infer from Haddad's affidavit that Saticoy may have
22 either not bid at all or bid less given the added litigation risk a tender attempt would entail.

1 In sum, genuine disputes remain on Saticoy's unjust enrichment claim against Boulder
2 Ranch. I therefore deny the competing summary judgment motions as to this claim, except I
3 grant in part Boulder Ranch's motion as to some of the claimed damages.

4 **II. CONCLUSION**

5 IT IS THEREFORE ORDERED that plaintiff PROF-2013-S3 Legal Title Trust V's
6 motion for summary judgment (**ECF No. 48**) is **GRANTED** as follows: It is hereby declared
7 that the homeowners association's non-judicial foreclosure sale conducted on November 21,
8 2013 did not extinguish PROF-2013-S3 Legal Title Trust V's interest in the property located at
9 6425 Extreme Shear Avenue #101, Henderson, Nevada, and thus the property is subject to the
10 deed of trust.

11 IT IS FURTHER ORDERED that plaintiff PROF-2013-S3 Legal Title Trust V's claims
12 for wrongful foreclosure, negligence, negligence per se, and misrepresentation against
13 defendants Boulder Ranch Master Association and Homeowner Association Services, Inc. are
14 DISMISSED as moot.

15 IT IS FURTHER ORDERED that defendant Saticoy Bay LLC Series 6425 Extreme
16 Shear's motion for summary judgment (**ECF No. 49**) is **DENIED**.

17 IT IS FURTHER ORDERED that defendant Boulder Ranch Master Association's motion
18 for summary judgment (**ECF No. 57**) is **GRANTED in part**. The motion is granted as to the
19 fraudulent misrepresentation claim and as to the requested damages of maintenance costs,
20 interest, and attorney's fees for the unjust enrichment claim. The motion is denied as to the
21 unjust enrichment claim for return of some or all of the property's purchase price.

22 DATED this 17th day of June, 2019.

23 
ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE